

1 prohibition against cruel and unusual punishment; and (2) that the California state
2 courts “abused their discretion in providing more deference to the” Board’s ruling
3 “than required and in their application of the ‘some evidence’ standard.” (*Id.*)

4 Petitioner alleges that he is currently incarcerated at the Chuckawalla Valley
5 State Prison (a California prison facility) located in Blythe, California. (Pet. at 2.)
6 Petitioner further avers that he was sentenced by the Los Angeles County Superior
7 Court (Torrance Courthouse) on October 17, 1989. (*See id.*)

8 **II.**

9 **DISCUSSION**

10 Pursuant to 28 U.S.C. § 2243, the Court has reviewed the Petition and
11 determined that it was improperly filed under 28 U.S.C. § 2241. A state prisoner’s
12 challenge to a denial of parole must be brought under 28 U.S.C. § 2254, and not §
13 2241. *Montue v. Department of Corrections*, 2008 WL 2178589, at * 1 (9th Cir. May
14 22, 2008) (“district court did not err by refusing to permit [a California prisoner] to
15 challenge the denial of parole in a 28 U.S.C. § 2241 petition, because such a challenge
16 is only properly brought in a 28 U.S.C. § 2254 petition”); *see also Shelby v. Bartlett*,
17 391 F.3d 1061, 1063 (9th Cir. 2004) (“§ 2254 is the exclusive vehicle for a habeas
18 petition by a state prisoner in custody pursuant to a state court judgment, even when
19 the petitioner is not challenging his underlying state court conviction”) (internal
20 quotation marks and emphasis omitted).

21 Here, Petitioner asserts that he is a California prisoner, incarcerated at a
22 California state prison (Chuckawalla Valley State Prison), pursuant to a California
23 judgment (from the Torrance Courthouse of the Los Angeles County Superior Court).
24 (Pet. at 2.) Accordingly, Petitioner’s challenge to the Board’s parole determination “is
25 only properly brought in a 28 U.S.C. § 2254 petition.” *Montue*, 2008 WL 2178589, at
26 *1; *see also Shelby*, 391 F.3d at 1063.

III.

ORDER

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3 1. The Petition, filed on June 14, 2010, is **DISMISSED** with leave to
4 amend, pursuant to 28 U.S.C. § 2243, because it was improperly filed under 28 U.S.C.
5 § 2241.


6 2. Petitioner is given leave to amend and is **GRANTED** up to and including
7 July 19, 2010, to file a First Amended Petition curing the deficiencies discussed above.
8 Petitioner must clearly designate on the face of the document that it is the "First
9 Amended Petition," and it must be retyped or rewritten in its entirety on a
10 court-approved form. The First Amended Petition may not incorporate any part of the
11 original Petition by reference. After amendment, the Court will treat the Petition as
12 nonexistent.

13 3. If Petitioner fails to file a First Amended Petition by July 19, 2010,
14 and/or such First Amended Petition fails to comply with the requirements set forth in
15 this Memorandum and Order, the Court may recommend that this action be dismissed
16 with prejudice.

17 4. The Clerk of Court is **DIRECTED** to send Petitioner the court-approved
18 form for filing a Petition for Writ of Habeas Corpus by a Person in **State** Custody.

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20 IT IS SO ORDERED.

21
22 DATED: June 17, 2010

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25 HON. JAY C. GANDHI
26 UNITED STATES MAGISTRATE JUDGE
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